IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 1129 of 2004 (O&M)

Date of Decision : 25.9.2007

Smt. Surjit Kaur & Anr.

.....Appellants

Versus

Santosh Kumari

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.S.R. Hooda, Advocate
for the appellants.

Mr. Arun Jain, Advocate
for the respondent.

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VINOD K. SHARMA, J. (ORAL)

This order will dispose of R.S.A. No. 1129 of 2004 titled Smt. Surjit Kaur & Anr. Vs. Santosh Kumari and R.S.A. No. 1130 of 2004 titled Smt. Surjit Kaur & Anr. Vs. Santosh Kumari as the common question of law and facts are involved in both these appeals.

For facility the facts are being taken from R.S.A. No. 1129 of 2004.

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff respondent Santosh Kumari for possession was ordered to be decreed whereas the suit filed by the appellant Smt.Surjit Kaur for

injunction was ordered to be dismissed.

The plaintiff respondent Santosh Kumari has sought possession of 7 ½ marlas of land on the basis of sale deed executed in her favour by Vikram Kumar, who is the brother of father of Smt. Surjit Kaur. The appellant had taken a contradictory stand firstly that he had become owner of the land by inheritance further in the alternative that she was entitled to retain possession as owner in view of the fact that her adverse possession has matured into ownership. The learned lower appellate Court affirmed the finding recorded by the learned trial Court by observing as under :-

> "After hearing both the sides and perusing the learned lower court files carefully, I am of the considered opinion that there is no merit in the present appeals and the same are liable to be dismissed. The respondent-Smt. Santosh Kumari purchased the suit land measuring 7 ½ marlas comprised in Khasra No. 54//26, vide registered sale deed no. 1240 dated 19.8.1998 from Vikram Kumar. The copy of the said sale deed is Ex.P12 on the lower court file. The vendor Vikram Kumar was owner of the property sold vide registered sale deed dated 19.8.1998 by virtue of mutations, copies of which are Ex.P7 to Ex.P9 on the file. A perusal of these mutations goes to show that father of the present appellant-Smt. Surjit Kaur had sold 7 ½ marlas of land out of Khasra No. 54//26 to Vikram Kumar vide three registered sale deeds and mutations were accordingly sanctioned in favour of Vikram Kumar. Similarly, Kesar, uncle of the appellant

-Smt. Surjit Kaur, had also sold his 7 ½ share in Khasra No. 54//26 to Vikram Kumar vide registered sale deed, copy of which is Ex.P14. Thus, it is proved that Vikram Kumar, vendor of the respondent, had a valid title to the property sold vide registered sale deed dated 19.8.1998. On the other hand, case of appellant-Smt. Surjit kaur is that she had inherited the suit property from her father Dayal Singh. However, there is no evidence on the record to prove this fact. Rather, when appeared as DW1, Smt. Surjit Kaur-appellant stated that she did not claim the suit property on the basis of succession and rather, she claimed the suit property on the basis of her long possession. Mere long possession, however, cannot amount to adverse possession. Even otherwise, long possession of appellant- Smt. Surjit Kaur is also not proved by any evidence. In her testimony as DW1, appellant- Smt.Surjit Kaur did not depose even a word to the effect that she was in adverse possession of the suit property or that her possession was hostile to the true owner or the entire world. Moreover, the pleas of ownership by succession and adverse possession are self-contradictory and destructive to each other. Significantly, in the suit for permanent injunction filed by the appellants, no plea of adverse possession was taken qua the suit property. It was only in the written statement-cum-counter claim of the appellants that the plea of

adverse possession was taken which clearly go to show that the plea of adverse possession is after thought and far from truth. The case of the appellants in the plaint is not that the suit property is part of Khasra No. 54//26 or that the appellant-Smt. Surjit Kaur is owner of Khasra No. 54//26. The respondent had purchased 7 ½ marlas of land comprised in khasra No. 54//26. In order to arrive at a just conclusion, the learned trial court appointed a local commissioner to demarcate the suit property. The Sadar Kanungo, Panchkula demarcated the suit property in the presence of the parties and the report is Ex.P5 along with the site plan Ex.P4. As per the same, it was found that the suit property was comprising of khasra No. 54//26 and the appellants were in possession of the same. The then Sadar Kanungo Narender Singh appeared as PW1 and deposed about the demarcation. From the demarcation report of the local commissioner, it is established that the suit property is part of khasra No. 54//26 which has been purchased by the present respondent. The appellants have been found to be not having any title to the same either by succession or by adverse possession. It has no-where been disputed by the appellants in their pleadings or in the evidence that subject matter of all the suits is different. The site plan submitted by the appellants along with their plaint has not been proved on the file nor tendered in evidence. Therefore, the contention regarding

the property in all the suits being different, is without any basis. There is no dispute with regard to the proposition of law laid down in the authority relied upon by the learned counsel for the appellants but the same has no application to the facts of the present case because, neither possession of the appellants beyond 12 years is proved nor it is proved that the appellants are in hostile possession to the true owner. The learned trial court has considered every aspect of the matter and after appreciating the oral and documentary evidence adduced in the case, has recorded firm findings of fact, which are not liable to be interfered with in the present appeals."

The reading of the order shows that the findings have been recorded on the basis of admission made by the appellant in her cross-examination that she was claiming the right in the property on the basis of adverse possession. However, the evidence brought on record did not prove her possession to be adverse to the true owner. Consequently, the suit filed by Smt. Santosh Kumari was decreed whereas suit filed by Smt. Surjit Kaur was dismissed. The concurrent finding of facts are based on appreciation of evidence.

No question of law muchless substantial question of law arises for consideration by this Court.

Dismissed.

25.9.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**